

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION**

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|--|---|------------------------|
| STATE OF WEST VIRGINIA, <i>et al.</i> , |) | |
| |) | |
| <i>Plaintiffs,</i> |) | |
| |) | |
| CASS COUNTY FARM BUREAU, <i>et al.</i> , |) | |
| |) | |
| <i>Plaintiff-Intervenors</i> |) | No. 3:23-cv-32-DLH-ARS |
| |) | |
| v. |) | Hon. Daniel L. Hovland |
| |) | |
| UNITED STATES ENVIRONMENTAL |) | |
| PROTECTION AGENCY, <i>et al.</i> , |) | |
| |) | |
| <i>Defendants,</i> |) | |
| |) | |
| CHICKALOON VILLAGE |) | |
| TRADITIONAL COUNCIL, <i>et al.</i> , |) | |
| |) | |
| <i>Defendant-Intervenors.</i> |) | |

FEDERAL DEFENDANTS’ STATUS REPORT

On February 18, 2025, ECF No. 256, the Court granted Defendants’ motion to stay the case with status reports every 60 days. In accordance with the Court’s Order, Defendants respectfully submit this status report to apprise the Court of recent developments.

As previously reported, the Agencies solicited stakeholder input to assist the Agencies in further clarifying the definition of “waters of the United States.” *See* 90 Fed. Reg. 13428 (Mar. 24, 2025). The Agencies held nine listening sessions for various stakeholders and the public, soliciting input to assist the Agencies in further clarifying the definition of “waters of the United States.” *See* <https://www.epa.gov/wotus/public-outreach-and-stakeholder-engagement-activities#wotusnotice>. The period for the public to submit written recommendations closed on April 23, 2025. 90 Fed. Reg. 13428 (Mar. 24, 2025). The Agencies received more than 45,000

recommendations, including recommendations from Plaintiffs and some intervenors. *See* <https://www.regulations.gov/docket/EPA-HQ-OW-2025-0093>. The Agencies have stated that they “intend to issue a proposed rule in the coming months.” *See* <https://www.epa.gov/newsreleases/epa-and-army-wrap-initial-listening-sessionsmove-toward-proposal-revise-2023>.

Further agency action to clarify the definition of “waters of the United States” could potentially resolve the litigation or narrow the existing dispute. Accordingly, the stay in this case remains appropriate. Defendants will file another status report by October 21, 2025.

Respectfully submitted,

ADAM R.F. GUSTAFSON
Acting Assistant Attorney General
ENVIRONMENT AND NATURAL
RESOURCES DIVISION

Of Counsel:

Simma Kupchan
Krista Hughes
Elise O’Dea
Environmental Protection Agency

Daniel Inkelas
Erica Zilioli
U.S. Army Corps of Engineers

/s/ Elliot Higgins

SONYA J. SHEA, CA Bar No. 305917
SARAH IZFAR, DC Bar No. 1017796
JIN HYUNG LEE, DC Bar No. 198095
ELLIOT HIGGINS NY Bar No. 5737903
United States Department of Justice
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044
Tel: (303) 844-7231 (Shea)
Tel: (202) 305-0490 (Izfar)
Tel: (202) 514-2640 (J. Lee)
Tel: (202) 598-0240 (Higgins)
Fax: (202) 514-8865
sonya.shea@usdoj.gov
sarah.izfar@usdoj.gov
jin.hyung.lee@usdoj.gov
elliott.higgins@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2025, I filed the foregoing using the Court's CM/ECF system, which will electronically serve all counsel of record registered to use the CM/ECF system.

/s/ Elliot Higgins